सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015
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9787098271

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(85)127&129/Ahd-II/Appeals-II/ 2016-17**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 286-287-17-18**

दिनांक (Date): **25.01.2018** जारी करने की तारीख (Date of issue): 14/2/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं---------- दिनांक _----------से सृजित

Arising out of Order-In-Original No ._75 to 76/AC/D/2016/RK__**Dated: 15.12.2016** issued by: Deputy Commissioner Central Excise (Div-IV), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Transweld Mechanical Engineering Works Pvt Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है |

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

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(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिएं।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपऐ या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजन्कि क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bark of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में ,इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER IN APPEAL

M/S. Transweld Mechenical Engg. Works Pvt. Ltd., 44/C, Aswamegh Ind. Estate, Changodar,Ahmedabad.(hereinafter referred to as *'the appellant'*) have filed two appeals against the Order in Original No. 75 & 76/DC/D/2016/RK (hereinafter referred to as *'the impugned orders'*) passed by the deputy Commissioner, Central Excise, div-II,Ahmedabad-II (hereinafter referred to as the *'the adjudicating authority'*). The appellant is engaged in the manufacture of transformersparts under Chapter 85 of Central Excise Tariff Act, 1985 .[hereinafter referred as CETA-1985].

2. Briefly stated facts of the case are that during the audit of records, it was noticed that the Appellant was engaged in manufacture of excisable goods and also undertaking job work activities which were in the nature of "exempted services" w.e.f 01.04.2011. Since, the Appellants were engaged in providing exempted services they were liable to pay an amount equal to 5% or 6% of the value of job work activities by virtue of the Rule-6 of the Cenvat Credit Rules, 2004. That the Appellant had received income towards job work and had not maintained separate accounts as per Rule 6 of the Cenvat Credit Rules, 2004. That the Appellant had not disclosed material facts to the department that they were engaged in providing job work services for a consideration and thus extended period of limitation was invokable. Two show Cause Notice were issued pursuant to an Audit undertaken during the period of 2012-13 To Dec-15. Vide the above orders confirmed Cenvat Credit payable Rs. 54753/- +172428/ under Rule 14 of the Cenvat Credit Rules, 2004 with interest and 50% penalty .

3. Being aggrieved by the impugned order, the appellant has filed two appeals against the impugned ordesr wherein it is mainly contended that;

a. That the Appellant has been manufacturing excisable goods which are cleared on payment of Excise Duty. The appellant has also been maintaining all the statutory records for manufacture and clearance of the goods, and all the transactions of the appellant are duly recorded in such statutory records and registers, in the books of accounts which are audited also. that the department had prior knowledge of the activities carried out by the Appellant

b. That the Appellant had not availed Cenvat Credit on goods received from the principal manufacturers and therefore Rule 6(3)(i) was not to be applied to their case. That Excise duty was ultimately paid on the fully finished goods produced by utilizing intermediate products obtained by the Appellant on job work under rule 4(5)(a)of ccr2004, and therefore reversal of credit not required . .they relied on the case laws of 1. JBF Industries 2014-TIOL-972-(TRI-Ahmd.) 2. Sterlite Industries. 2005-(183)ELT 353- TRI- LB. 3. Kinetic Engg.Ltd. 2007-(208)-ELT-526-(Tri- Mum) 4. Sterlite Industries Ltd. 2005-TIOL-305-CESTAT-MUM-LB

c. That The Assistant Commissioner has failed to appreciate the ratio of the abovementioned orders. Therefore the demand of an amount equal to 5% and/or 6% of value of exempted services is illegal and without the authority of law.

d. That the Appellant has deposited Rs. 4106/-+12932/-being 7.5% of the duty demanded under the above referred adjudication orders, in compliance with Section 35F of the Central Excise Act, 1944 as pre-deposit.

e. That the Appellants have not availed Cenvat Credit on inputs received from the principal manufacturer. That Rule 6 of the Cenvat Credit Rules, 2004 is applicable when Cenvat Credit of input Services used in relation to providing exempted service has been taken. Rule 6(3)(i) of the Cenvat Credit Rules, 2004 is not applicable to the facts of the present case.

f. That Extended period of limitation cannot be invoked in the facts of the present case, that the job work activity was disclosed by the Appellant to the department while filing ER-4 returns, and thus there was no suppression of facts about the job work activity. The Excise authorities were well within the knowledge of job work activity done by the appellant, and invocation of extended period on this basis is illegal.

g. There being no contravention by way of suppression of facts with intent to evade payment of duty on the Appellants part, the extended period of limitation is invoked without any authority in law. That Penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 cannot be imposed. That Interest cannot be demanded.

4. Personal hearing in the case was granted on 05-10-17, 8-11-17,01-12-17 and 20.12.2017.however nobody appeared on behalf of the said appellant . They have filed their GOA submissions with citations. I have carefully gone through the facts of the case records, OIO's ,grounds of the Appeal Memorandum and citations.

5. I find that, the appellant is a manufacturer of the excisable goods. that during the audit of records, it was noticed that the Appellant was engaged in manufacture of excisable goods and also undertaking job work activities which were in the nature of "exempted services" w.e.f 01.04.2011. Since, the Appellants were engaged in providing exempted services they were liable to pay an amount equal to 5% or 6% of the value of job work activities by virtue of the Rue 6(3)(i) of the Cenvat Credit Rules, 2004. That the Appellant had received income towards job work and had not maintained separate accounts as per Rule 6 of the Cenvat Credit Rules, 2004. That the Appellant had not disclosed material facts to the department. that they were engaged in providing job work services for a consideration and thus extended period of limitation was invokable. Two show Cause Notice were issued pursuant to an Audit and during the period of 2012-13 To Dec-15. Vide the above orders confirmed demands under Rule 14 of the Cenvat Credit Rules, 2004, with interest and 50% penalty.

6. I find that, The Appellant is manufacturer of excisable goods which are cleared on payment of Excise Duty. The appellant has also been maintaining all the statutory records for manufacture and clearance of the goods, and all the transactions of the appellant are duly recorded in such statutory records and registers. I find that, that the Appellant had not availed Cenvat Credit on goods received from the principal manufacturers and therefore Rule 6(3)(i) was not to be applied to their case. That Excise duty was ultimately paid on the fully finished goods produced by utilizing intermediate products obtained by the Appellant on job work, and therefore credit cannot be denied for job work activities. I rely on the case laws of 1. The Hon'ble CESTAT's Larger bench decision in the case of Sterlite Industries Ltd. 2005-TIOL-305-CESTAT-MUM-LB held that;

cenvat/ modvat-modvat –jobwork- modvat credit of duty paid on inputs used in the manufacture of final products cleared without payment of duty for further utilization in manufacture of final products, which are cleared on payment of duty by the principal manufacturer, not hit by provisions of Rule 57C of erst while central excise rules, 1944.

These findings have also been upheld in the case of Commissioner Vs. Sterlite Industries (I) Ltd. (2009 (244) ELT A89 (Bom.).

The lower authority has failed to appreciate the ratio of the above mentioned orders. The demand of an amount equal to 5% and/or 6% of value of exempted services is illegal. Therefore, the impugned order needs to be dropped in the interest of justice.

7. Further, I find that, That Extended period of limitation cannot be invoked in the facts of the present case. That the job work activity was disclosed by the Appellant to the Central Excise authorities and thus there was no suppression of facts about the job work activity. That the job work activity was examined by Audit officers in past also and the Excise authorities were well within the knowledge of job work activity done by the appellant, that the entire basis of invoking extended period of limitation i.e. non-availability of the relevant information is incorrect .The law about invocation of extended period of limitation is well settled. In cases where certain information was not disclosed as the assessee was under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts. I rely on the case law of Continental Foundation Jt. Venture V/s CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), held that;

mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.

8. Further, I find that, mere failure in giving correct information would not be a case where the Revenue can invoke extended period of limitation. There being no contravention by way of suppression of facts with intent to evade payment of duty

on the Appellants part, the extended period of limitation is invoked without any authority in law. I find that, Penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 cannot be imposed in the facts of the present case. Hence, I find that there is no justification for imposition of penalty. I rely on the case of M/s. Hindustan Steel Limited reported in 1978 ELT (J159). Therefore, I hold that the impugned orders are not sustainable, hence, interest as well as penalty is also not sustainable.

9. In view of the foregoing discussion and findings, I allow both the appeals filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the appellant stand disposed off in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Attested

[K.K.Parmar)
Superintendent (Appeals)
Central tax Ahmedabad.

Date- /1/18

By Regd. Post A. D

M/s. Transweld Mechenical Engg. Works Pvt. Ltd.,
44/C, Aswamegh Ind. Estate,
Changodar, Ta-Sanand,
Ahmedabad.

Copy to:

1. The Chief Commissioner, CGST Central Excise, Ahmedabad.
2. The Commissioner, CGST Central Excise, Ahmedabad- NORTH.
3. The Dy. Commissioner, CGST C.EX.Div-III, Ahmedabad-NORTH
4. The Asstt. Commissioner (Systems), CGST C.EX.Ahmedabad- NORTH.
5. Guard Life.
6. PA file.